

OGC Has Reviewed

MEMORANDUM FOR: Director of Logistics

FROM:

Chief, Supply Division, OL

SUBJECT: Title IV, Section 404

1. Per your request, we have reviewed subject title and have noted that, except for a statement in Section 410 (a) (2) pertaining to the maintenance of ordnance materiel, no references are made to our existing supply operations.

2. While the following statements may not be couched in the words acceptable for direct inclusion in the title, we urge that the Office of Legislative Counsel be asked to review them with the Office of General Counsel, who is fully aware of our need for legislation to authorize release of excess materiel to foreign governments, and make what changes are necessary to incorporate the concepts into the title.

"Develop and manage a supply system to support operations. Implicit in this authorization is the authority to acquire materiel through other U.S. Government agencies and commercial sources; maintain supply depots; maintain, test, and store ordnance materiel; establish property accountability systems; and to transport materiel through its own and other U.S. Government and commercial resources."

"While the Agency is charged to dispose of its excess and unserviceable property through the prescribed General Services Administration procedures, the DCI, or a senior officer designated by him, may approve the sale of such property to an individual

SUBJECT: Title IV, Section 404

or foreign government, or the transfer to a foreign government or directly to another U.S. Government agency, or the donation to a non-profit organization when such sales, transfers or donations are economically advantageous to the U.S. Government, essential for cover reasons, or operationally advantageous."

3. In addition to the above comments, we recommend that in Section 404 (b) (6) the statements "including logistical services" be added after the words "common concern." STATINTL



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5 Dec 77?

RECD COMMENTS - REPHRASED (OL 7 5465)

25X1C A. Section 408 (a)(1) - Provides for the transfer of funds to and from other departments . . . "such sums of money as may be approved by the Director of National Intelligence and the Director of the Office of Management and Budget . . . ". The Agency currently makes such transfers routinely to GSA (SLUC, renovations, FPS, alarm systems, etc.), [REDACTED] without such approvals. The language in this section, if our intrepertation is correct, is unduly restrictive.

B. Section 408 (a)(5) - Provides authority for rental of premises, however, it requires that . . . "the Director (A) certifies to the DNI that a waiver of the limitation otherwise applicable to the renting . . . is necessary . . . and (B) promptly notifies the committees of Congress . . . ". We are not altogether certain what limitations exist regarding rents but the language in this paragraph could seriously impact on such operations as:

1. Leasing of safe sites by OL and other components
2. DDS&T's current authorities to acquire space
3. The use of proprietaries, devised facilites, and other NOC elements to acquire space

Further, this section perpetuates the ambiguity which currently exists between the CIA Act of 1949, wherein the DCI has carte blanche acquisition authority, and subsequent rulings of the Comptroller General wherein CIA was told to conduct itself as an "ordinary" agency except when the DCI certifies that there is an "extraordinary"

OL 7 5465a

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reason to do otherwise.

The conclusion is heightened by inclusion in Section 410 (a)(2) of the authority to make expenditures for . . . "Rent at the seat of government and elsewhere . . . without regard to the limitations prescribed in . . . " (basically the Economy Act of 1932 - 40 U.S.C. 278a). We should attempt therefore to harmonize the language in these two sections by including the exemption to the Economy Act of 1932 in Section 408 (a)(5) as well as Section 410 (a)(2) and require DCI certification to the DNI and notification to Congress only in the event we exceed the limitations of the Economy Act of 1932.

- C. Section 409 (a) and (b) - The procurement authorities in these paragraphs discuss "property" with no distinction made between real and personal property. To preclude confusion, suggest that the adjectives "real and personal" precede "property" to avoid this problem.
- D. Section 410 (a)(2) - The final phrase . . . "But no funds may be expended for activities which have not been authorized by law enacted during the same or immediately preceding fiscal year. . . ." give rise to a potential problem. Habitually, there are projects for which funds are obligated in one fiscal year and expenditures stretched out over succeeding fiscal years as the project is staged or phased into completion. In major construction projects, this is the rule rather than the exception. The wording of this paragraph would appear to preclude expensing of funds obligated in one year

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for more than that year plus the following fiscal year. If this is the intent of Congress, it should be clarified to allow the Agency, once a project has been approved as a line item in our budget, to expense against the original obligation until the project is completed.

Another possible interpretation of this phrase is that it was inserted to support the Agency's position that if major engineering projects are included as line items in the Agency's Congressional Budget submission, and hence, subsequently become authorized by law, then the prospectus requirements of the Public Buildings Act of 1959 have in essence been met and no further action pursuant to that law is required of the Agency. Should this latter interpretation be correct, then it should be so stated in the Act.

The exemption from the Public Buildings Act of 1959 is noted with pleasure, but again, to eliminate future questions, suggest that a phrase such as " . . . and all subsequent amendments thereto . . . " be added.

Again, it would be most appropriate if the exemption to the Public Buildings Act could be included in the Authorities Section (408 (a)(5)) to put all the rights and responsibilities of the DCI vis-a-vis acquisition of space, construction, renovations, etc., into a single "package".

- E. Section 417 - Contains a number of authorities for payment of allowances and even allows (see paragraph (f)) the DCI to . . . "Provide

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assigned persons with basic household furnishings and equipment for
use on a loan basis in personally owned or leased residences in
foreign areas

[REDACTED]

[REDACTED]

it is suggested that somewhere in Title IV this matter be addressed.

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5 DEC 1977

MEMORANDUM FOR: Deputy Director of Logistics

STATINTL FROM:

[REDACTED]
Chief, Procurement Division, OL

SUBJECT: Review of the National Intelligence
Reorganization and Reform Act of 1977,
Title IV, Central Intelligence Agency
Act of 1977

I have completed a cursory review of the subject draft legislation to include the references contained in Chapters 137 and 139 of Title 10 and submit for your consideration the following observations.

a. I can find no reference anywhere providing the authority for the disposition of personal property.

b. I assume that our authority to procure also permits storage and maintenance of procured articles, in essence, a supply function.

c. Page 16, Section 408(d)(2) specifically prohibits the "umbrella" concept for proprietaries in that the language contained in the last sentence stipulates, "Any proceeds from any such liquidation, sale, or other disposition shall be deposited by the Director into miscellaneous receipts of the Treasury." (Underlining added) This would have precluded us from the dissolution of [REDACTED] and the utilization of residual funds to establish its replacement. Therefore, I suggest that this language be deleted and an appropriate substitute, such as "except when said funds are utilized for a replacement in kind and approved by the Director," be added.

d. Page 18, Paragraph (b), the Agency's authority to conduct SC-1 and SC-2 procurements is clear. However, the last clause, ". . . unless such provision expressly cites this subsection." gives rise to the thought of the Brooks Bill wherein the Director's authority was subrogated in the ADP world as a result of its promulgation. This could happen over and over again merely by citing this subsection.

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e. Page 20, Section 410(c) specifically places us under the cognizance of the Government Accounting Office; and Subsection (c)(2) requires that any exemption taken by the Director must not only be reported but also "the reasons for granting it" must be disclosed. Further, this report must be rendered quarterly, a continuing administrative burden.

f. Page 24 imposes the annual report requirements on all research and development, a continuing administrative burden.

g. Page 25, Section 411(j)(3) requires a summary of the Agency's use of proprietaries during the preceding year, including the identification of such proprietaries and a description of the nature and function of each such proprietary. This I presume requires a complete description and specific identification of our proprietaries and their activities. My concern deals with the proliferation of data concerning proprietaries in the Congress and, therefore, possibly making their activities a matter of public record. I suggest this article be reviewed carefully to preclude the specific identification of the proprietaries.

h. Page 27, Section 412(a)(5) only permits us to provide technical equipment not guidance and training to the Drug Enforcement Administration. I suggest the language in Section 412(a)(4) be considered.

i. Page 28, Section 412(a)(8) and (9), notification required to the Immigration and Naturalization Service and the Internal Revenue Service appears to kill the cover requirements and, therefore, precludes the action necessary to safeguard our employees' travel overseas unless very carefully handled.

j. Page 34, Section 417(a)(5), the restrictions contained in this paragraph dealing with the cost of packaging, crating, and transportation of household effects for 90 days after arrival or until the establishment of residence quarters, "whichever is shorter," is unduly restrictive. I make reference to the establishment of [redacted] in 1974. Because of the lack of housing available, it was 6 or 7 months before

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any permanent quarters could be obtained. Further, the provision of this action may pose a hardship on employees we place in this position. I suggest that the clause "whichever is shorter" be deleted.

k. Page 47, Section 421(a) - I believe the Section refers to the National Security Act of 1947 and the Central Intelligence Act of 1949 are a miscite.

1. With respect to the review of the two referenced Chapters of Title 10, namely 137 and 139, deal with a whole host of procurement authorities ranging everywhere from the exceptions necessary to formal advertising through types of contracts, advanced payments, allocation of appropriations, assignment and delegation of procurement functions and responsibilities, determination and decisions, examination of records, and research and development, respectively. However, the hooker in Section 409(a) of the proposed legislation stipulate that while the Director has the authority to waive, he must report "any waiver exercised under -- this action shall be reported to the committees of Congress and have jurisdiction over the Agency together with the reasons for exercising the waiver." The effect of this language is to place an undue burden on the Agency and specifically procurement for any deviation whatsoever from any of the provisions of Chapters 137 and 139. For example, if the Director, in his discretion to support operations, intends to provide an advance payment, he must waive the restriction on advance payments and advise his oversight committee of why he waived the restriction; i.e., I make reference to the most recent air transport agreements "747." While the rights of the Director in the procurement field are clear under the provisions of Chapters 137 and 139, they are attempting by this legislation to force what I believe to be specific notification each and every time the Director avails himself of the rights of the Director or the head of an agency under the provisions of the referenced Chapters 137 and 139 of Title 10.

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DRAFT - [REDACTED] hb/12/6/77

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STATINTL

MEMORANDUM FOR: Director of Logistics

FROM:

[REDACTED]
Logistics & Procurement Law Division
Office of General Counsel

SUBJECT: National Intelligence Reorganization
and Reform Act of 1977, Title IV--
Central Intelligence Agency Act of
1977--Senate Select Committee Draft

REFERENCES: (a) Memo dtd 5 Dec 77 to D/OL fm C/PD/OL,
same subject

(b) Note dtd 5 Dec 77 to AEO/OL fm
DC/P&PS/OL, subject: Review of
Draft Intelligence Charter
Legislation

(c) Memo dtd 5 Dec 77 to D/L fm C/SD/OL,
subject: Title IV, Section 404
(OL 7 5463)

(d) RECD Comments - Rephrased (OL 7 5465)

1. (U) The undersigned has reviewed subject proposed legislation and the comments found in references (a) through (d). The comments voice genuine concerns; particularly, with regard to the lack of property disposal authority and the unclear Public Buildings Act issue. I concur with the expressed comments. Except for purposes of clarity, I will not repeat the observations expressed in references (a) through (d) at this time.

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Reform Act of 1977, Title IV--Central Intelligence
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2. () It is my opinion that the proposed legislation is drafted with view towards separate individuals occupying the Director of National Intelligence (DNI) and Director of the Central Intelligence Agency (DCIA) positions. See Sec. 405(d). As long as one individual wears both hats, the approval authority required of the DNI throughout the legislation by the DCIA would be pro forma. It should be noted, however, that would not be true where there are two separate individuals. This would have enormous impact upon the Agency's procurement practices, as the Director of Central Intelligence (DCI), as the law currently provides, is regarded as a head of agency essentially with the same authorities as the Secretary of Defense. The DCIA would not have those powers and most of the flexibility would be lost that the CIA necessarily employs to accomplish its mission. The contracting officers on both sides of the house would feel this immediately.

3. () Section 409 is a mixed blessing. It provides that the CIA would be fully included under the Armed Services Procurement Act. While it clarifies the legal authority for many of the Agency's procurement practices, it also means

we would be restricted to the Armed Services Procurement Regulations (ASPR) by law, not to the extent practicable. The DCIA would have to obtain specific deviations from the DNI. Currently, the DCI may independently waive or modify ASPR for good cause. On the other hand, chapter 139 of Title 10 United States Code does give express legislative authority to conduct research and development, a factor not found under current law. Ideally, for the CIA to insure flexibility necessary to protect our method of contracting, Section 409(a) should be revised to delete at line 12 of that provision, "with the approval of the Director of National Intelligence."

4. () Moreover, it must be noted that ASPR is promulgated by DoD. The current ASPR and the ASPR committee are being abolished and replaced by the Defense Acquisition Regulation System (DARS). This is more than mere eyewash because the chairman of the ASPR committee will be eliminated and replaced by a director. The DARS director, in essence, will have full authority to solely modify and issue new regulations, clauses and procedures. The ASPR committee members formerly had a vote. Under the new proposal, which the Office of Federal Procurement Policy (OFPP) at this writing has agreed to, the DARS members will merely be advisors. Practically

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speaking, this means the procurement practices of the CIA will be dictated by DoD, a situation, hopefully, that was not consciously contemplated in the draft.

5. () Section 410(a)(2), amongst other matters, raises the issue concerning spending sums made available for requisition, construction and alteration of buildings and facilities without regard to the Public Buildings Act of 1959. This language, found currently in Section 8(a) of the present CIA Act, caused considerable difficulty in the renovation of the Community Headquarters Building, as well as in the Headquarters Building in Langley. It is suggested that the precise meaning of this provision be obtained.

6. () Section 410(b)(1) would require the reporting of expenditures of unvouchered funds to both committees on appropriations in the House and Senate in toto. Moreover, the Comptroller General would have the right, in accordance with Section 410(c), to review and audit all funds, not just vouchered funds, unless the latter are exempted by the DNI upon notice to the appropriate committees. The DCIA would not have this authority.